

TAB 88

Matheson, Clayton

From: Robert Colton [robertecolton@hotmail.com]
Sent: Monday, October 03, 2005 5:50 PM
To: Robert Colton
Subject: House panel won't get all it wants, Jockeys' Guild attorney says

House panel won't get all it wants, Jockeys' Guild attorney says

Published October 03, 2005 : Page 14

An attorney for the Jockeys' Guild said he won't produce all the documents that were subpoenaed by the U.S. House of Representatives. Some of the documents don't exist, said Lloyd Ownbey, and others fall under attorney-client privilege. The deadline for turning over the documents is today.

"They may have to go to federal court and get a court to say the jockeys are in contempt of Congress," Ownbey said.

The House Energy and Commerce Committee's Subcommittee on Oversight and Investigations issued subpoenas Sept. 20 for documents that the guild, a labor organization that represents about 1,200 jockeys nationwide, had failed to supply to the subcommittee in response to two prior written requests.

Jockey Gary Birzer found that he was not covered for \$800,000 in medical bills.

Jeff Miles, spokesman for Rep. Ed Whitfield, R-Ky., who is chairman of the subcommittee investigating the Jockeys' Guild, would not comment on what would happen if the guild fails to produce the documents. "We will cross that bridge when we come to it," he said.

Among the documents listed in the subpoena were records relating to a decision by the guild to allow the lapse of a \$1 million insurance policy that had covered jockeys for racetrack accidents.

Many jockeys became aware that the policy had expired only after Gary Birzer, a West Virginia jockey, was paralyzed in an accident last year and discovered that he was not covered for more than \$800,000 in medical bills.

Additionally, the House issued a subpoena to Matrix Capital Associates, a firm owned by guild CEO Wayne Gertmenian, requiring production of tax returns reflecting payments to Matrix by the guild.

Ownbey said the tax returns may be covered by attorney-client privilege. "That is another thing we have to determine," he said.

Ownbey said he would turn over some documents in response to the subpoena, but he would not identify which ones. He also would not identify which documents he believes are privileged or say which ones do not exist.

Ownbey has been critical of the congressional investigation, calling it a "witch hunt" and saying that it should be directed at horse-racing tracks. Rather than providing the documents the subcommittee requested in its second letter to the guild, Ownbey sent a lengthy letter criticizing the investigation.

Rep. Bart Stupak, D-Mich., the ranking Democrat on the subcommittee, said in a statement that Ownbey's comments about the congressional investigator were "unsupported and incorrect."

Ownbey's letter "is a prime example of challenging the integrity of an investigation when faced with the production of possibly incriminating documents," Stupak said.

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TAB 89

Lawyer calls probe 'witch hunt'

Print This Story
By LIZ MULLEN

Staff writer

Published August 29, 2005 : Page 06

An attorney for the Jockeys' Guild, facing a deadline to produce documents in a congressional investigation into the lack of insurance coverage for many jockeys, called the probe a witch hunt and questioned the relationship between the congressman spearheading the inquiry and track operator Churchill Downs Inc.

Churchill Downs and a spokesman for Rep. Ed Whitfield strongly denied suggestions by attorney Lloyd Ownbey, who faces a deadline this week to give Jockeys' Guild papers to Congress.

"We think they are being funded in this little operation by a certain track that has litigation against us by the name of Churchill Downs," guild legal counsel Lloyd Ownbey said of the House Subcommittee on Oversight and Investigation.

Ownbey said he was not suggesting that Churchill Downs officials and Rep. Ed Whitfield, R-Ky., who is overseeing the inquiry as chairman of the subcommittee, were engaging in a "quid pro quo." But Ownbey added, "I would be surprised if he doesn't get benefits from Churchill Downs."

Jeff Miles, spokesman for Whitfield, said Ownbey's comments were "absolutely absurd." Churchill Downs spokeswoman Julie Koenig-Loignon called the implication ludicrous.

In a letter sent this month, Whitfield and Rep. Bart Stupak, D-Mich., asked the guild to provide numerous documents by Wednesday or face the possibility of having the information subpoenaed.

Ownbey said he would try to answer the letter's questions by this week's deadline, but added, "Whether I can answer them to the satisfaction of the congressman, I don't know. The questions are asking for the moon."

The guild has been under fire since last year when many jockeys learned that the organization's \$1 million insurance policy, which jockeys thought covered them for racetrack accidents, had expired two years earlier. Many jockeys found out they were not covered only after Gary Birzer, a West Virginia jockey who was paralyzed last year, discovered that he was without insurance to pay for his nearly \$800,000 in medical bills.

Jockeys' Guild employees have given contradictory answers about how the guild's roughly 1,200 members were notified that the insurance had expired.

Guild employees told congressional investigators that jockeys "were given formal written notice" that the policy would not be renewed, according to Whitfield and Stupak's letter to the guild.

But guild CEO Wayne Gertmenian stated in court documents, "After reasonable investigation [the guild] is not aware of how members [of the guild] were notified."

Asked which answer was true, Ownbey backed Gertmenian's statement. "If that is what he stated in an interrogatory, that is what must have happened, because he is a truthful man," Ownbey said.

Ownbey also maintained that the guild's board of directors in 2002 decided to allow the accident coverage to lapse. That contradicts six guild board members who told SportsBusiness Journal they have no recollection of ever making such a decision.

The House panel, a subcommittee of the Energy and Commerce Committee, has asked for minutes or documents related to any meeting in which the Jockeys' Guild board made a decision to allow the insurance to lapse.

"I have not laid my eyes on any documents dealing with that decision," Ownbey said, then added later, "I haven't made a purposeful effort to lay eyes on them."

A Churchill Downs political action committee made five contributions totaling \$3,750 to Whitfield's political campaigns between April 1998 and February 2004, according to the Federal Elections Commission. During that same time period the Churchill Downs PAC gave more than \$50,000 to a variety of political candidates and political action committees, according to federal elections records.

"Through our political action committee, we do contribute to campaigns, but we contribute to a number of candidates in the state of Kentucky," said Churchill spokeswoman Koenig-Loignon. "But back to the claim [Ownbey] raised about financing this investigation, our response is that is absolutely ludicrous. We will be more than happy to cooperate with [Whitfield's] committee and the questions that are put to us, but that is the extent of our involvement."

Whitfield spokesman Miles said, "This is a bipartisan effort, this investigation. The investigation is looking after the welfare of the jockeys and the backside workers as Congressman Whitfield is looking for a solution to this problem. After hearing Mr. Ownbey's comments, it appears that he is not interested in looking for a solution."

TAB 90

Matheson, Clayton

From: Robert Colton [robertecolton@hotmail.com]
Sent: Monday, August 08, 2005 1:11 PM
To: Gary Donahue; Feddo, Tom; Matheson, Clayton
Subject: Re: Jockeys' Guild - Sports Business Journal article Aug 8, 2005

Guild CEO: Board dropped coverage

Print This Story
By LIZ MULLEN
Staff writer

Published August 08, 2005 : Page 05

The CEO of the Jockeys' Guild stated in a legal document that he was "not aware" of how the roughly 1,200 jockeys in the Guild were notified that their insurance coverage for catastrophic racetrack accidents had expired.

Guild CEO Wayne Gertmenian also stated under oath that it was the organization's nine-member board of directors that decided in 2002 to discontinue the policy, which provided \$1 million of coverage.

Following a racing accident, jockey Gary Birzer found out he had no insurance coverage.

But six of those jockey board members disputed Gertmenian's contention, saying they do not remember voting, or even discussing, a decision to cancel the policy. "I can guarantee there is not one person on the board who would have allowed that," said Robbie Davis, a retired jockey who was a board member in late 2001 and early 2002.

Hall of Fame retired jockey Chris McCarron, also a board member at that time, said last week, "I do not recall it even being put to the board for a vote."

Gertmenian and his attorney did not return phone calls. Attempts to reach the three other jockeys who were board members at the time — Kent Desormeaux, Tomey Jean Swan and Nicky Wilson — were unsuccessful.

Many jockeys told SportsBusiness Journal last year that they thought they were covered for \$1 million, and only found out differently after jockey Gary Birzer was paralyzed in a July 2004 racing accident at Mountaineer Park in West Virginia.

"This tragic accident has left Gary Birzer in a desperate situation, with steadily mounting medical bills that approach \$800,000 and no insurance coverage," said Paul Koczur, Birzer's attorney, in a statement. "If he had been properly notified that the Guild had decided to stop protecting its membership in this crucial way, then Gary would have purchased such insurance on his own."

Koczur added that Gertmenian's lack of awareness of how members were notified that the insurance had lapsed "gives tremendous credence to all those jockeys who maintain that no such notice was ever given."

Gertmenian gave the answers to legal questions, called interrogatories, as part of a lawsuit brought against the Guild by Eddie King, a New Jersey jockey who was removed from the Guild's board of directors after he publicly expressed concerns about the organization.

Alan Milstein, King's attorney, commenting on Gertmenian's responses, said, "Considering that the whole reason for the Guild's existence was to provide these kinds of benefits to its members, it strains credulity that no one from the Guild has a recollection about this important issue."

The Jockeys' Guild was formed in about 1940 to provide benefits to jockeys injured on the track or to the families of riders killed on the racetrack. "When a jockey got hurt, before we had any coverage, the way they were taken care of was they passed the hat," said John Giovanni, who was the Guild's national manager from 1987 until he was replaced by Gertmenian in 2001.

The Guild started covering its members for on-track accidents in the 1950s. Jockeys had \$1 million of coverage, through various policies, from the mid-1980s until April 1, 2002, when the last policy was allowed to lapse, Giovanni said.

Most racetracks in North America provide up to \$100,000 of coverage, but jockeys who suffer severe spinal and head injuries quickly run through that. Five states — including California and New York — cover jockeys for racetrack accidents through workers' compensation plans.

Since the lack of adequate coverage was discovered, Kentucky Gov. Ernie Fletcher has convened a panel to study providing workers' compensation in that state. Additionally, some tracks, including six owned by Churchill Downs Inc., have secured \$1 million worth of coverage. But there are still hundreds of jockeys with just \$100,000 of coverage, including Shannon Campbell, who was paralyzed in an accident at Charles Town Races in West Virginia last month.

Meanwhile, five jockeys or former jockeys who were board members when the insurance lapsed, including McCarron, Davis, Larry Reynolds, Ray Sibille and Mike McCarthy, said last week they do not remember being involved in that decision. Former board member Robert Colton would not comment last week but told SportsBusiness Journal last year that he was not involved in the decision to allow the insurance to lapse.

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TAB 91

Jockeys aim for state fund run by Guild

Print This Story

By LIZ MULLEN

Staff writer

Published January 31, 2005 : Page 01

A group of California racehorse jockeys, worried about controversy surrounding the management of the national Jockeys' Guild, have formed their own organization in an attempt to take over management of a state fund that pays about \$1 million a year for benefits for jockeys.

Veteran Northern California jockey Ron Warren Jr. filed papers last week with the California Secretary of State's office to form a nonprofit corporation called the California Jockeys Guild. Attempts to reach Warren were unsuccessful.

Paul Atkinson, a Southern California jockey who is involved with the effort, said the state guild is being set up to "secure" the health benefits of California jockeys.

There are 332 jockeys licensed to race in California, but only about 100 of them ride regularly in the state and qualify for state health and welfare benefits. The founding of the California Jockeys Guild is a response to recent events surrounding the national labor organization, which represents about 1,200 jockeys.

"I am concerned myself, and I would say that others are concerned, with the behavior of the national Jockeys' Guild board of directors and the current management," Atkinson said. He wouldn't be more specific about those concerns other than to point to numerous news "events" surrounding the Guild in the last few months. He also stressed that the new guild won't try to get jockeys to resign from the national Jockeys' Guild, but instead will encourage membership in both organizations.

A spokesman for the national Jockeys' Guild declined to comment.

The Jockeys' Guild came under fire last fall when jockeys discovered that the organization had canceled insurance that covered them for catastrophic racing accidents without officially informing them. Since then, a major racetrack trade organization and Churchill Downs have called for an

accounting of the Guild's books, and more than 100 jockeys signed a petition for an audit of the Guild.

The Guild also expelled its former treasurer and removed a paralyzed former jockey from his position as co-chair of a Guild charity after they sued the organization for an accounting of its books.

The California Horse Racing Board has formed a committee to look into allegations surrounding the Guild, including whether it double-billed the state and the charity, the Disabled Jockeys' Fund, for the same expenses. The board has asked the Guild for numerous documents, including a complete accounting of money paid out of a special state fund set up by the California legislature in 1997 to be used for health and welfare benefits for California jockeys.

Racing Board member Richard Shapiro, who is spearheading the committee investigating the Guild, said in a statement that he received a letter from California jockeys about their intention to form a guild, but had no further comment.

Atkinson, who is one of the jockeys appointed to the racing board committee that is requesting information from the Guild, said that if a majority of the California jockeys join the California Jockeys Guild, the law would authorize that the state money, which comes from uncashed bets on California races, would go to the new organization.

Atkinson wouldn't provide a lot of details about the new guild, including how many jockeys were involved in forming it or how long it was in the planning stages. California jockeys did not sign the petition asking for an audit of the Guild, but there has been a growing rift between the California jockeys and the national labor organization, which is based in Monrovia, Calif.

In fact, Atkinson said, after being stifled in their attempts to find out more about health benefits from the Jockeys' Guild, about a year ago a group of jockeys formed the California Health and Welfare Committee to gain some control over their health care needs.

At its annual meeting in Dallas in December, the Jockeys' Guild didn't re-elect Hall of Fame jockey Kent Desormeaux, who is based in Southern California, to the board of directors, meaning that for the first time in many years there is no California jockey on the Guild's nine-member board.

TAB 92

Tape: Churchill jockey walkout 'no accident'

In audio of meeting, Jockeys' Guild president says Sellers was coached before he was cuffed and ejected

Print This Story
By LIZ MULLEN
Staff writer

Published January 17, 2005 : Page 03

Editor's note: This story is revised from the print edition.

The Jockeys' Guild and its lawyers coached jockeys who walked out at Churchill Downs late last year in a dispute over insurance coverage, and orchestrated a much-publicized incident in which a top rider was escorted off the track in handcuffs, according to an audiotape of a Guild meeting.

Guild President Wayne Gertmenian told about 30 jockeys on a Nov. 7 conference call that the Guild had scored a public relations coup in its "war" with Churchill Downs when popular Kentucky jockey Shane Sellers was led from the track "in chains."

"The biggest mistake that has been made so far by the other side happened today," Gertmenian said on the tape, a copy of which was obtained by SportsBusiness Journal. "And that was no accident. Hours and hours were spent with lawyers getting Shane prepared for that mistake today. And that was huge for us."

Sellers last week disputed that he spent hours with the Guild preparing for the incident. Sellers said he did call Gertmenian on Nov. 7 as Churchill security officers were threatening to handcuff him. "I said, 'They are going to arrest me,'" said Sellers. "He said, 'Well, then, let them arrest you.'"

Sellers said, however, that other jockeys who refused to ride did talk to Gertmenian days in advance.

On the Guild meeting tape, Gertmenian said that some of the jockeys who ended up boycotting Churchill, including Mark Guidry, Robby Albarado and Jeff Johnston, "spent time with me and the lawyers and [Guild vice president] Albert [Fiss]" before taking action.

Gertmenian and Guidry's agent did not return a phone call for this story.

Johnston denied that he spoke to Guild management and lawyers before he decided to walk out at Churchill, and said he did not know why Gertmenian had said otherwise.

Albarado wouldn't comment beyond saying, "I don't know the legality of that and I have put that whole Churchill thing behind me."

The Guild publicly expressed support for the walkout at Churchill last year but has not taken responsibility for it. Although jockeys' employment status is not completely clear, many view them as independent contractors, and independent contractors are prohibited from engaging in strikes under antitrust laws.

Bob Batterman, outside labor counsel for the NHL, said that Churchill Downs could potentially sue the jockeys.

Sellers said that jockeys called Gertmenian for fear of legal action. "None of us has got any education, and the reason why [the jockeys] called is they didn't want to be sued," Sellers said. "And [Gertmenian] said, 'Boys, this is a different situation. You are not striking. It's a health and safety issue.'"

The Guild has been under fire since jockeys discovered recently that it let its catastrophic on-track accident policy lapse in 2002 without officially informing the jockeys. The walkout at Churchill was based on jockeys protesting their lack of insurance, even though the Guild was responsible for canceling it.

Churchill Downs President Steve Sexton said he has not heard the tape of the meeting but has heard about it, as it has been circulating in racing circles in the last few weeks.

"It is unfortunate that it occurred," he said, "and, yes, we are offended and, yes, we are hurt by the fact the whole incident took place."

Sexton said he is aware the action raised legal issues, but he would not comment on the company's legal options.

The 15 jockeys who refused to ride at Churchill last November did not stop the races from being held, as the Louisville, Ky., track was able to find replacement riders. But the track did suffer a public relations black eye, because the treatment of Sellers was unpopular with fans and with many in the industry.

Gertmenian told jockeys on the conference call that Sellers' removal gave the Guild a great story to tell. Since then he has publicly compared Churchill Downs to "plantation owners" and jockeys to "slaves."

TAB 93

California panel to examine Guild

by LIZ MULLEN

Staff writer

Published Dec. 27, 2004 in SportsBusiness Journal

A member of the California Horse Racing Board is forming a fact-finding committee to look into the activities of the Jockeys' Guild, in particular focusing on why many jockeys were not aware that the Guild had canceled their catastrophic accident insurance.

Racing Board member Richard Shapiro said the committee of jockeys and other horse racing industry executives will begin meeting early next year to address financial and insurance questions surrounding the Monrovia, Calif.-based Guild, which represents 1,200 jockeys nationwide.

"Until those questions are answered, I do not believe we should provide [the Guild] with any more money," Shapiro said. "I have to make sure our jockeys and their families are getting the coverage that they deserve and are entitled to."

California has a special fund that provides about \$1 million a year to the Guild for health and welfare benefits for California jockeys. The fund is administered by the California Horse Racing Board.

The Guild has come under scrutiny since many jockeys learned just a few months ago that it canceled an insurance policy two years ago that would have covered jockeys for up to \$1 million for racetrack accidents. California is one of five states that provide workers' compensation insurance that covers such accidents, but California jockeys routinely ride stakes races in other states where they are covered only up to \$100,000. A West Virginia jockey paralyzed in a racetrack accident in July discovered that he is not covered for about \$500,000 in medical bills.

"How can there be a policy canceled and the jockeys are not aware of it?" Shapiro said.

Shapiro questioned Guild Vice President Albert Fiss about financial and insurance issues at a racing board meeting earlier this month but said he was not satisfied with the answers. Shapiro noted that Guild President Wayne Gertmenian has not answered questions from the press or complied with calls from racetracks and jockeys for an audit or accounting.

"If [Gertmenian] was forthcoming and said, 'Let us open our doors and books and let's answer questions,'" the situation could be resolved, Shapiro said.

Shapiro said that he has named to the committee hall of fame retired jockey Chris McCarron, who brought Gertmenian into the Guild but no longer speaks to him; and hall of fame jockey Kent Desormeaux, who was recently voted off the Guild's board after publicly expressing concern about the organization.

TAB 94

Jockeys' Guild puts the boot to critics

By LIZ MULLEN
Staff writer

12/13/04

The Jockeys' Guild discussed its "war plans" at its annual meeting in Dallas last week and took steps to remove jockeys and others who have publicly questioned the organization's management.

The Guild has been under fire since jockeys learned recently that the organization canceled their insurance for catastrophic racetrack injuries two years ago. The Guild, which represents about 1,200 jockeys nationwide, has refused calls by its members and by Churchill Downs Inc. for an independent financial accounting.

Hall of Fame jockey Kent Desormeaux, a Jockeys' Guild board member who has publicly said he would investigate the growing complaints about the organization, was originally left off the ballot for re-election to the Guild's governing body, sources said. After Desormeaux and other jockeys from California complained, a revote was taken and he was voted out.

Sources said that Desormeaux got into a heated argument with Jockeys' Guild President Wayne Gertmenian at 3 a.m. at the Dallas hotel where the meeting was held, after the jockey asked Gertmenian to present evidence to back up his résumé. A racing publication reported recently that there is little to no evidence that Gertmenian held the important government posts he claimed to during the Nixon and Ford administrations.

Desormeaux, reached after the meeting was over, would not comment, except to say, "I have been working diligently for the last couple of months on [investigating] all of these allegations, and quite frankly I am very happy I am not on the board so I can get back to paying attention to being a jockey."

Also at the annual meeting, the Guild's board voted Eddie King, its former treasurer who is suing the organization for an accounting of its finances, out of the Guild. King, who was voted off the board last month, was told during the meeting that he had been expelled from the organization entirely.

King's attorney, Alan Milstein, said the action, taken without advance notice to King and without his getting a chance to speak, violates federal labor laws protecting union members.

Reporters covering the meeting waited for two days for a comment from the Guild management. Guild officials announced the results of the election and that Gertmenian's contract had been extended until 2009, but they would not answer questions. The more than 100 jockeys at the meetings were told repeatedly by Guild staff not to speak to reporters covering the meeting.

An agenda for the Jockeys' Guild assembly stated that they held a session titled "Guild War Plans." It was not clear what was discussed at that meeting, but the Guild supported boycotts by jockeys at Churchill Downs in Kentucky and Hoosier Park in Indiana earlier this year.

The Guild has told members it is planning a lawsuit against racetracks over jockeys' media rights for races broadcast to other tracks and wagering sites. Sources said the Guild has been talking

about going to court to get an order to halt simulcasting, a multibillion-dollar business. Attorneys addressed the jockeys during the meeting.

"File for declaratory relief [or judgment]" and "File for a cease and desist order" were two items under the heading "The Jockeys' Guild War Plans" in a packet of information given to the jockeys.

TAB 95

Jockey's Guild pushes members to sign over media rights; suit ahead?

by LIZ MULLEN

Published Nov. 29, 2004 in SportsBusiness Journal



**LABOR &
AGENTS**
LIZ MULLEN

The Jockeys' Guild has been pressing its members to sign a contract that assigns their media rights to the labor organization in preparation for a lawsuit against racetracks that broadcast horse races by satellite, sources said.

The Guild, on its Web site, said that more than 1,100 of its 1,243 members have signed the media rights form, and also stated that it has engaged more than 30 volunteer attorneys.

Although Guild officials have had success getting rank-and-file jockeys to sign away their rights, they have had more difficulty with higher profile jockeys who ride in major stakes races and actually have some endorsement deals of their own. But some of those jockeys have felt compelled to sign the form in recent weeks to show solidarity with the Guild and with jockeys who have boycotted Churchill Downs in Kentucky and Hoosier Park in Indiana.

A group of Kentucky jockeys went to New York earlier this month to meet with some of the more famous riders who had not signed the form and convinced them to sign it, said sources who asked not to be identified.

Some lawyers who have read the form say it goes far beyond group licensing agreements that other major sports unions ask their members to sign.

The Jockeys' Guild agreement states, in part, "I hereby irrevocably assign to the Jockeys' Guild, Inc. ... all of my rights with respect to the commercial use of my name, portrait, picture, image, likeness, or personal items worn or carried by me, at a recognized track including, but not limited to, all broadcasts and other off-track presentations of races in which I have ridden at any time after April 29, 1973."

Peter Schaffer, a lawyer who represents 50 NFL players and is a certified NHL player agent, said the Jockeys' Guild contract "definitely goes beyond what every other union requires of their members in terms of licensing rights."

The major sports union agreements deal only with group licensing issues, Schaffer said. "They do not interfere with the individual's right to seek marketing and endorsement income on his own."

He added that he would advise his clients against signing such a document.

Guild President Wayne Gertmenian did not return a call seeking comment.

It is not clear if the Guild plans to file suit over media rights. There were rumors in the racing community that a lawsuit was imminent and that the Guild would seek a restraining order to halt all simulcasting of races around the country. Billions of dollars are bet each year by patrons who are off-track.

In the early 1990s, the Jockeys' Guild, under different management, did file a lawsuit in California seeking a determination that jockeys had media rights, but that suit was withdrawn before it went to trial.

"We withdrew it because we felt we couldn't win it," said John Giovanni, former manager of the Guild. "Basically, a judge told us we couldn't win the case, so we withdrew it, because the last thing we wanted was to be in a situation where the jockeys didn't have any claim to media rights."

Racetracks pay the Guild about \$2.2 million a year for media rights, although the tracks take the position that the jockeys do not have media rights, said Chris Scherf, executive vice president of the Thoroughbred Racing Associations. The TRA negotiated a contract with the Guild for the tracks to pay the money and the tracks still pay it, even though that contract expired at the end of 2002.

The Guild historically has used that money to pay for health insurance and catastrophic racetrack accident insurance for jockeys, Giovanni said. In fact, for many years up until the late 1980s that money was specifically designated for insurance for jockeys, but the TRA wanted that designation taken off the contract when insurance premiums began escalating, Giovanni said.

The horse racing industry is struggling to find a way to pay for catastrophic racetrack accident insurance. The Jockeys' Guild policy lapsed two years ago.

TAB 96

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NTRA names ex-Guild leaders Bailey, Day to insurance panel

Print This Story

By LIZ MULLEN

Staff writer

Published November 22, 2004 : Page 11

The National Thoroughbred Racing Association named jockeys Jerry Bailey and Pat Day to a panel to address the crisis of jockeys racing without adequate medical insurance. Both are former presidents of the Jockeys' Guild who quit the organization because of disagreements with the labor group's management team, which has come under fire from many quarters for not taking care of its members' insurance needs.

The panel has 30 other members, including horse trainers, owners and racetrack executives. It will begin meeting today to address the issue of jockeys who are injured in racetrack accidents. Jockeys at Churchill Downs in Kentucky and Hoosier Park in Indiana refused to ride races over the issue and were banned at both tracks.

The panel's work "is not intended to be a negotiation," said Keith Chamblin, chairman of the group and NTRA senior vice president. "It is intended to be more of a fact-finding mission and an opportunity for frank discussion amongst all segments of the industry."

The Jockeys' Guild, which supports the banned riders at Churchill and reportedly was involved in the boycott at Hoosier Park, has one member representative, Darrell Haire, on the panel. Guild President Wayne Gertmenian, who has publicly stated that he doubts the panel will get anything done, was not invited, Chamblin said, although he added "there was not a conscious effort to avoid inviting [Gertmenian]."

"We are aware that both Pat Day and Jerry Bailey are no longer members of the Guild," Chamblin said. "However, the reason why both Pat and Jerry are participating on the panel is because both care a great deal about their fellow jockeys and have a keen concern about the

current situation, and it doesn't go further than that."

Jockeys are covered for only \$100,000 of medical expenses, except in New York, New Jersey, California, Idaho and Maryland, all of which offer workers' compensation to jockeys. The Guild had insurance that would have covered jockeys for more than \$1 million for racetrack accidents, but the current Guild management canceled that coverage, and many jockeys said they were never formally notified of the change.

Both Day and Bailey quit the Guild after Gertmenian took over and locked former Guild President John Giovanni out of the organization's offices.

Many jockeys only became aware of their lack of coverage when Gary Birzer, a West Virginia jockey who was paralyzed in July, discovered that he was covered for only \$100,000 of his more than \$500,000 in medical bills.

"This is absolutely an issue that the jockeys and the Jockeys' Guild should have delved into long before now," Bailey said last week. "A lot of times things go unnoticed until there is a catastrophe."

Bailey said, too, that he sympathizes with the jockeys who boycotted the tracks over the issue, "and I would be of the same accord if it weren't for the same [Jockeys' Guild] management in place."

TAB 97



Auditor raised 'red flag' over Guild's books

by LIZ MULLEN

Staff writer

Published Nov. 22, 2004 in SportsBusiness Journal

The auditing firm that looked at the Jockeys' Guild's 2001 financial statements wouldn't issue an opinion because it couldn't be sure the books were free of "material misstatement," according to a letter from auditors to the Guild's board of directors.

That's a position that isn't typical and could be fraught with meaning, said David Costello, CEO of the National Association of the State Boards of Accountancy.

"That puts everyone on alert that there could be something terribly wrong with this company or organization," he said. "It's a red flag."

Jockeys' Guild officials did not return numerous phone calls.

In the same letter, sent to the board in 2002, auditors said they could not be sure that money the Guild held in savings accounts for jockeys had been returned to the riders, as the Guild represented.

There has been a growing chorus of voices asking for a new, independent audit of the Guild after many jockeys recently discovered that the Guild had canceled a \$1 million catastrophic racetrack accident insurance policy for jockeys more than two years ago. About 28 jockeys boycotted two tracks earlier this month to protest their lack of insurance.

Last week, Eddie King, a jockey who was voted off the Guild's board after he went public with concerns that \$1 million may have been moved out of a Guild charity for permanently disabled riders, filed two lawsuits against the Guild, seeking reinstatement to the board and an accounting of its finances.

King's attorney, Alan Milstein, said King wants to know the circumstances surrounding the Guild's cancellation of the insurance policy, which the Guild had historically paid for out of money it received from tracks.

"If the Guild cannot afford the insurance it has bought in the past, why not?" Milstein asked.

King also wants to know why the balance of the Disabled Jockeys' Fund dropped precipitously from \$1.3 million in 2001 to \$441,000 in 2002. Guild President Wayne Gertmenian told King "that he wished to divest the fund of \$1 million to create the illusion that the fund was in financial trouble, thereby encouraging donations from wealthy benefactors," King alleges in his lawsuits, which were filed last week in both state and federal courts in New Jersey.

Gary Donahue, co-chairman of the Disabled Jockeys' Fund, who recently received financial statements for the charity for 2002 and 2003 after months of asking for the information, said the documents have raised some new questions, including why money from the fund was being spent on temporarily disabled riders when it has historically been spent only on permanently disabled jockeys. Donahue said he is concerned because the fund's balance at the end of 2003 was down to about \$105,000.

"The fund is strictly for permanently disabled riders," Donahue said, adding "my mission is solely to protect permanently disabled riders." He also said that \$530,752 was taken out of the fund in 2002 for "Guild reimbursements," but that he doesn't know what that means.

The current Guild management was put in place after a hostile takeover in June 2001 in which the old staff was fired and locked out of their offices without any notice. When Gertmenian's group took over, they could not get into the computer to see the financial records, according to numerous sources.

"When they realized they didn't know what the heck they were doing, they tried to hire my secretary back," said John Giovanni, the former Guild manager who was ousted in the takeover. But, he added, "none of the women [employees] would go back, and they tried every one of them."

Some of the problems noted in the 2001 audit were due to the disorderly transition, according to the auditor's report, but not all. For example, the auditor noted that there was "a \$40,789 difference that we could not reconcile" in the Guild's operating account. One reason for that, the auditor noted, was that checks that were issued after Dec. 31, 2001 — well after Giovanni was thrown out — were included as outstanding for 2001 when they should not have been.

Guild management has told some jockeys that an audit for 2002 was "clean," according to numerous sources.

Sources said that the 2003 financial statements are now being prepared.

Guild management has resisted suggestions by its members and others for an outside audit. Guild vice president Albert Fiss, asked about calls for an audit during an appearance last week on industry radio show attheracesandbeyond.com, said, "There was an audit."

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Churchill jockey ban prompts NTRA action

Panel will address insurance coverage issue in hopes that other horse tracks won't suffer walkouts

Print This Story
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Published November 15, 2004 : Page 05

Concern that jockeys could refuse to ride at racetracks across the country to protest their lack of insurance coverage was part of the reason the National Thoroughbred Racing Association formed a panel to address the issue, NTRA Commissioner D.G. Van Clief Jr. said last week.

Fifteen jockeys, including national victory leader Rafael Bejarano, last week were banned from Churchill Downs for the rest of the fall meet after they refused to ride horses because of the insurance issue.

"Could this happen at other tracks?" Van Clief said. "Certainly part of the reason to put together a working group would be to hopefully resolve what could be a fairly inflammatory situation."

Van Clief

Work stoppages in other sports haven't "done anything to engender affection from the fans, and it won't here," he said.

The NTRA tentatively set Nov. 22 for the first meeting of the industry panel. The members had not been named as of late last week.

Only five states — New York, California, New Jersey, Maryland and Idaho — have workers' compensation plans that cover jockeys. Nationwide, tracks provide jockeys with up to \$100,000 in medical coverage for racetrack accidents.

The Jockeys' Guild, which represents about 1,250 jockeys nationwide, historically paid for coverage above that \$100,000, but the coverage was canceled by the Guild in April 2002.

Although jockeys have been riding without the catastrophic coverage for more than two years, many of them have become aware only recently that they were not covered because of an accident involving a West Virginia jockey. Rider Gary Birzer was paralyzed after a racing accident

in July and cannot pay his more than \$500,000 in medical bills.

The Churchill Downs job action started after jockey Tony D'Amico cracked his ribs and punctured a lung after he fell from a horse at the track earlier this month. After jockeys refused to accept mounts for the Nov. 10 card, Churchill Downs banned them from the entire meet, which runs through Nov. 27.

It was not clear how the Jockeys' Guild was involved in this job action. Guild officials would not return phone calls, but they said in a statement that "the behavior of Churchill Downs Inc. is morally reprehensible."

Churchill Downs President Steve Sexton said he told jockeys to ask the Guild why they don't have coverage when tracks nationwide pay \$2.2 million to the Guild, money that was originally earmarked to pay for insurance.

"They need to ask the Guild why it was canceled and not communicated, and where that \$2.2 million went," Sexton said. Churchill Downs officials have already asked Guild officials "for an accounting of that \$2.2 million," he said.

The Churchill Downs action comes as some jockeys have been questioning the Guild and more than 100 signed a petition asking for an independent audit.

Last week, the Guild's senate voted 13-8 to remove jockey Eddie King from the board of directors after he went public with concerns that \$1 million was moved out of a Guild charity for permanently disabled riders.

Although some jockeys have been questioning the Guild, some last week expressed being torn between those concerns and a need for jockeys to be united.

Jockeys' legal rights and those of the Guild have never been very clear as there are arguments about who employs them. The U.S. Labor Department oversees the Jockeys' Guild, but it is not recognized as a union by the National Labor Relations Board.

Bill Gould, a Stanford Law School professor and former chairman of the NLRB, said that if the jockeys were recognized by the federal labor board, they could potentially file an unfair labor practices complaint against Churchill Downs for banning them.

Churchill Downs maintains the jockeys are not employees of the racetrack.

Remi Bellocq, executive director of the national Horsemen's Benevolent and Protective Association, said that in the states where jockeys are covered by workers' comp, jockeys are seen as employees of the horse trainers. In other states, they are viewed as independent contractors.

"The jockeys are asking the tracks that they be employees of the racetracks and feel the tracks should provide the coverage," Bellocq said. "The reality of it is a solution will probably come between all three parties sitting down."

The problem with that is that it is not clear that the Jockeys' Guild will join the NTRA discussion. Guild President Wayne Gertmenian told south Florida radio station WNN last week that he wanted to negotiate directly with Churchill's Sexton, and said if the industry tries to resolve the insurance situation as a group it will never get done.

Churchill spokeswoman Julie Koenig-Loignon said, "This is not a Churchill Downs issue. This is an industry issue."